

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James A. Fleming,)	CIVIL ACTION NO. 9:13-3377-DCN-BM
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Medical Nurse, William Brown,)	
L. Williams, E. Tyler, Bernard McKie,)	
and Robert Ward,)	
)	
Defendants.)	
)	

This is a pro se civil rights case filed by the Plaintiff on December 4, 2013, pursuant to 42 U.S.C. 1983. Defendants filed an Answer on April 9, 2014, along with a motion to dismiss the unnamed Defendant Medical Nurse. Pursuant to local Rule 26.04, D.S.C., pretrial discovery was to have been completed within ninety (90) days following the joinder of issues. At the expiration of this period, an Order was entered giving the parties twenty (20) days from the entry date of that Order to file dispositive motions. However, those deadlines subsequently were suspended pending service of process on the Medical Nurse, who had been identified by the Plaintiff. That period of time has now expired, however, without service having been affected on the Defendant Nurse. Therefore, this Defendant is subject to dismissal pursuant to Rule 4(m), Fed.R.Civ.P. Cf. Mid-Continent Wood Products, Inc., v. Harris, 936 F.2d 297, 1991 U.S. App. LEXIS 13888 (7th Cir. 1991) [Case law interpreting Rule 4(m) [or its predecessor, Rule 4(j)] has uniformly held that dismissal is mandatory if a defendant is not served within 120 days unless good cause is shown].



With respect to the remaining Defendants, since the discovery deadlines in this case have passed and there are no pending motions, unless a dispositive motion is filed this case is ready for trial. The parties shall have twenty (20) days from the entry date of this Order to file dispositive motions. In the event neither party files a dispositive motion, the file will be forwarded to a United States District Judge for trial.

In the event the parties wish to consent to have this case tried by a United States Magistrate Judge, a consent form is attached to this order.

IT IS SO ORDERED.



Bristow Marchant
United States Magistrate Judge

March 10, 2015
Charleston, South Carolina



UNITED STATES DISTRICT COURT

District of South Carolina

James A. Fleming,

Plaintiff,

v.

Medical Nurse, et al.,

Defendants.

NOTICE, CONSENT, AND ORDER OF
REFERENCE —
EXERCISE OF JURISDICTION BY A
UNITED STATES
MAGISTRATE JUDGE

Case Number: 9:13-3377-DCN-BM

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. 636(c), and Fed. R. Civ. P. 73, you are hereby notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

**CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all further proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented

Signatures

Date

_____	_____

_____	_____

_____	_____

_____	_____

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to The Honorable _____,
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in
accordance with 28 U.S.C. § 636(c), Fed. R. Civ. P. 73.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES
HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A
UNITED STATES MAGISTRATE JUDGE.